Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of		
Redesignation of the 17.7 - 19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.2 - 20.2 GHz and 27.5 - 30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3 - 17.8 and 24.75 - 25.25 GHz Frequency Bands for Broadcast Satellite Service Use	)	IB Docket No. 98-172 RM-9005 RM-9118 FCC 02-317

Reply to Opposition by Satellite Industry Association

The Independent MutiFamily Communications Council (IMCC) filed a Petition for Reconsideration and Emergency Request for Immediate Relief on May 8, 2003. The Satellite Industry Association (SIA) filed comments in Opposition on May 15, 2003. This filing is in Reply to the SIA Opposition.

Reply to SIA's Asserted Criteria for FCC to Act

The SIA Opposition focuses on four criteria, set forth in *Virginia Petroleum Jobbers v. Federal Power Commission* in 1958, supposedly essential before the FCC can grant requests for Emergency Relief. The IMCC did address each of the criteria. For the benefit of the SIA, the following rehearses the pertinent sections of the IMCC filing of May 8, 2003.

The first criterion urged by SIA is, "…likelihood of success on the merits." We assume that SIA is not by indirection suggesting that the IMCC

filing is without merit or frivolous. We view these issues as serious, as does the Commission. IMCC also knows that the FCC addressed these issues earlier and found in favor of the IMCC arguments. We believe the same arguments and facts apply in this situation and that the same decisions should be made.

Also, if IMCC did not think our view would merit success our small business leaders would not have invested the time and money required to prepare and to submit such a filing.

The second criterion is stated by SIA as, "…the threat of irreparable harm absent …relief." The IMCC filing includes numerous statements about how PCOs, equipment manufacturers and MDU owners and residents are damaged by the Second Order and that the damage increases over time. For instance, on page 13 of the filing we wrote, "The implications (of the Second Order) to the existing (PCO) customer base, near term business commitments and future business expansion are very significant. The industry wide result will be increased costs to the PCOs, stranded assets and a limited ability to make new customer commitments, which individually and collectively threaten the viability of the PCO players and the strength of a competitive video market."

In addition, SIA could go to the following for similar expressions that the Second Order imposes significant harm to the PCO industry and consumers: top of page 6 ("PCOs simply cannot maintain a competitive position viz a viz MSOs if the decisions of the Second Order are maintainted"), bottom of page 6 (The FCC adopted the following, "the cut off of co-primary status for PCOs would have 'immediate negative effects'", and "removing part of the 450 MHz would render virtually useless all of the spectrum needed by PCOs to deliver their products."), page 7 quoting the

FCC ("PCOs using the 18 GHz band, for both current and future operations, will not be able to compete effectively against franchised cable operators if we redesignate the 18.3-18.58 band…"). In addition, three paragraphs on page 8, bottom of page 13, bottom of page 14, twice on page 15, three times on page 16 and so forth.

The third criterion stated by SIA is the degree of injury to other parties if the relief is granted. It is impossible to know the degree of injury, if any. That is so because Hughes Network Systems, by far the largest anticipated user of the spectrum in question, perhaps the only user, has refused to divulge details about their plans including any meaningful information about deployment of earth stations. Unless one knows how many earth stations will be deployed, when, where and the interference that might or might not caused for other spectrum users, including PCOs, it is virtually impossible to calculate any injury that might occur.

In addition, in as much as none of the FSS systems are operational now and will not be until some unknown point in the future, but clearly for some considerable amount of time, damage is impossible to calculate. Even then, since we do not know how many FSS companies will have such systems and of what type and with what coverage in the United States and what the deployment schedule will be, it is impossible to evaluate potential damage.

Another factor in trying to evaluate potential influences is that it is IMCC's understanding that several of SIA's members have not argued that a "matched" 1000 MHz of uplink and downlink spectrum is needed to allow their systems to function.

The fourth criterion mentioned by SIA is whether the grant of the requested relief will further the public interest. The IMCC filing makes

clear that the United States Congress has adopted laws and the FCC has implemented regulations endeavoring to enhance video competition across America. The ability of PCOs to efficiently and effectively utilize microwave transmission is important to the ability of PCOs to provide that competition to franchised cable.

The SIA could have read in the IMCC filing statements such as, on page 4, "Without the use of microwave transmission, the ability of PCOs to compete with MSOs will be diminished and the rates charged to MDU residents will necessarily be increased because the cost of providing the service will go up." Other statements expanding upon this quotation, yet making the point that the public interest is furthered if PCOs continue to be able to utilize the spectrum in question, can be found as follows: top and middle of page 5 (quoting the FCC, use of the 18.3-18.58 space "resulted in PCOs being more competitive with MSOs: thereby, helping to accomplish thje Congressional mandate to enhance video compettition."), number 7 on page 7 quoting the FCC (taking the 18.3-18.58 spectrum away from PCOs would militate against "…our (FCC) expressed goal of increased competition in the provision of new video services").

Other SIA Comments in Opposition

Regarding prior FCC actions in this matter, it is accurate to state, as was pointed out in the IMCC filing, that the decision of the FCC in the Second Order is inconsistent with the FCC's prior determinations granting PCOs Emergency Relief on February 5, 1999, and ordering that the band in question be maintained for PCO use which was central to the Order of June 8, 2000.

On page 3 of SIA's Opposition, it is stated that, "By IMCC's own admission, its Petition does not warrant emergency relief." Review of the IMCC filing shows that the SIA assertion is grossly inaccurate. Also, the SIA misses the point made by the IMCC on page 4 regarding the fact that these issues are "repetitious of issues addressed and decided by the FCC." The IMCC was pointing out that the Second Order addresses issues that the FCC had already fully considered and upon which PCOs had made investments and made contractual commitments to MDU owners and residents. That is, the questions had previously been asked by the FCC and answered by the FCC. However, IMCC pointed out, if the FCC found it necessary to re-review their previous Orders, more complete views and analyses of the PCO point-of-view could be found in our previous filings but that the IMCC did not want to belabor many points that had already been submitted to and agreed to by the FCC.

As to SIA's complaint that the IMCC waited until May 8, 2003 to make its filing, perhaps SIA should be aware of the amount of preparation needed to make a substantive filing particularly when that filing includes meaningful technical analysis, reflects significant amounts of input from the FCC about technical justification for the Second Order and how the Order would be implemented and demonstrates work by PCOs endeavoring to find acceptable ways to implement the Order and thereby obviate the need to submit a filing. Besides, the IMCC filing was within the time period allotted for such filings, which we assume SIA recognizes.

Perhaps most importantly, the IMCC member companies worked diligently to find ways to implement the Second Order that would not totally disrupt their use of microwave transmission. This effort was not easy to pursue and took considerable amounts of time to analyze spectrum options,

requirements for new equipment and actual congestion. IMCC wanted to exhaust all technical and business model possibilities prior to submitting a filing. Besides, the IMCC did not feel any great pressure to file prior to the normal procedural date in as much as none of the FSS companies are operational.

IMCC urges the Commission to dismiss the SIA Opposition.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Reply to Opposition was sent by first class U.S. mail, postage paid, on this the 3rd day of June, 2003 to the following:

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